

Statement

Insurance Association of Connecticut

Government Administration and Elections Committee

March 7, 2011

HB 6166- An Act Concerning Surety Bonds And **Contracts For Public Projects**

The Insurance Association of Connecticut, IAC, is concerned with the concept proposed by HB 6166 which simply states to that it seeks to amend Sec. 49-41 of the general statutes to increase the threshold amount for contracts for public buildings and other public works needing surety bonds. The stated purpose of the proposal is to subject fewer contracts to the surety bonds requirement which will result in weakening the protections afforded by the mandatory requirement which has existed in Connecticut since 1949. Subjecting fewer contractors to the provisions of Sec. 49-41 will deprive Connecticut residents the protections afforded by the statutory payment bonds that are often instrumental in securing payment on public construction projects in Connecticut.

Requiring payment bonds for public construction has a long history in the United States going back to 1898 and the federal Heard Act and the federal Miller Act in 1935. Those federal statutes recognized that on public construction projects, subcontractors and suppliers of labor and materials do not have the traditional mechanics' lien remedies available to them on private construction projects. The federal Miller Act, and the so-called "Little Miller Acts" enacted in Connecticut and across the country provided on public projects the much needed replacement for the right to secure payment on private work. Payment bonds are vitally necessary to the success and well-being of Connecticut's subcontractors and suppliers to overcome the results in National Fireproofing vs. Huntington, 81 Conn. 632 (1909) in which it was established that contractors have no right to claim liens on public projects, and in O&G Industries v. Town of New Milford, in which our Connecticut Supreme Court refused recovery to a supplier on a public school construction project which claimed that a town was liable for payment as a result of the town's failure to secure the payment bond required by §49-41.

It is unclear how this proposal is envisioned to function. The threshold amount may increase for all contractors only on certain projects or the threshold may be different for different contractors on the same project. It is clear however, that there will be unintended consequences from such variances. Either certain projects will lose the protections afforded by the statutory bonds or certain contractors will have greater bargaining power over their competitors in bidding and securing jobs as they will be subject to differing bonding requirements.

This proposal may not only cause injury to the subcontractors and suppliers who build our roads, schools, city halls and other public projects but also CT residents if a project goes bad and the need to tap into a bond is triggered. It also exposes CT taxpayers to potentially unqualified contractors from surrounding states getting unbonded work in CT.